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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Kelvin D. Daniel, et al.,
9 Plaintiffs,
10 v.
11 Swift Transportation Corp.,
12 Defendant.

Case No. CV-11-01548-PHX-ROS
PROTECTIVE ORDER

13
14 IT IS ORDERED the Joint Motion for Entry of Stipulated Protective Order (Doc.
15 55) is APPROVED as follows.

16 **IT IS FURTHER ORDERED:**

17 1. The following definitions shall apply to this Order:

18 a. This “Action” shall refer to the above-entitled proceeding in the
19 United States District Court for the District of Arizona and any appeal thereof
20 through final judgment.

21 b. “Confidential Document” shall mean any document, material, or
22 thing produced in this Action which any party to this Action or any producing
23 party contends contains Confidential Information (as defined herein). Any
24 producing party or any party to this Action may designate any documents
25 “Confidential” in the reasonable exercise of such party’s sole discretion; provided,
26 however, by agreeing to this Order, no party waives the right to challenge any
27 other party’s designation of any document as “Confidential.”
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1 c. "Confidential Information" shall mean any information disclosed in
2 this Action which any party to this Action, or any producing party hereto,
3 contends should be protected from disclosure pursuant to this Order.

4 d. "Attorneys' Eyes Only Document" shall mean any Confidential
5 Document, material, or thing produced in this Action which any party to this
6 Action or any producing party contends contains Confidential Information of a
7 nature requiring extraordinary protection and which the producing party believes
8 should not be in the physical possession of an opposing party to this Action. Any
9 producing party or any party to this Action may designate sensitive documents
10 "Attorneys' Eyes Only" in the reasonable exercise of such party's sole discretion;
11 provided, however, by agreeing to this stipulation and order, no party waives the
12 right to challenge any other party's designation of any documents as "Attorneys'
13 Eyes Only."

14 e. "Producing party" shall mean any person or entity producing
15 documents, information or other materials in this Action, including, but not limited
16 to, any party to this Action or non-party who is subpoenaed in connection with this
17 Action.

18 f. "Legend" as used herein shall mean a large, bold stamp or similar
19 insignia stating either "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."
20 When any document is designated "Confidential" or "Attorneys' Eyes Only"
21 pursuant to this Order, the legend shall be affixed to the cover of such document.

22 g. When reference is made in this Order to any document or party, the
23 singular shall include the plural, and plural shall include the singular.

24 2. This Order shall govern only documents and other information and
25 materials generated or produced in response to any method of discovery conducted by
26 any party to this Action. Nothing contained in this Order shall require any party to treat
27 as Confidential Documents, Confidential Information, or Attorneys' Eyes Only
28 Documents, documents or information obtained other than through discovery in this

1 Action; provided, however, that nothing in this Order shall authorize any use of
2 documents or information which is otherwise impermissible.

3 3. All documents produced in this case, whether or not designated
4 “Confidential” or “Attorneys’ Eyes Only” shall be used solely for purposes of discovery,
5 motions, briefs, any hearings, the trial, and preparation for trial in this Action and on
6 appeal, if any, only and for no other purpose.

7 4. Except as set forth herein, Confidential Documents and any summaries,
8 charts or notes made therefrom, and any facts or information contained therein or derived
9 therefrom, may be disclosed only to the Court and/or to:

10 a. the parties and their employees, but only to the extent that such
11 disclosure is necessary for the conduct of litigation;

12 b. attorneys (including corporate in-house counsel and outside counsel)
13 for the parties hereto and their agents, employees, paralegals, or other secretarial
14 and clerical employees or agents;

15 c. experts, independent contractors, consultants, or advisors (including
16 their employees or other staff working under the supervision of such experts,
17 independent contractors, consultants, or advisors) who are employed or retained
18 by, or on behalf of, one or more of the parties to this Action or their counsel to
19 assist in preparation of this Action for a preliminary injunction hearing or trial;

20 d. deponents and their counsel who have a need to review this material
21 during the course of, or in connection with, depositions taken in or for this Action;

22 e. stenographic reporters or videographers who are involved in
23 depositions, the trial or any hearings or proceedings before the court in this
24 Action;

25 f. witnesses in this Action who need to review this material in
26 connection with their testimony in this Action;

1 g. outside vendors retained by outside counsel to provide support
2 services such as translation, copying, scanning, imaging, processing, or coding of
3 documents or preparation of demonstrative exhibits; and

4 h. any other person upon such terms and conditions as the parties may
5 agree in writing.

6 Confidential Documents may be disclosed to persons listed in subparagraphs (c), (d), and
7 (f) above only after such person has been shown a copy of this Order and has been
8 advised of the terms and operation of this Order, and agrees to be bound by the terms of
9 this Order in the form attached hereto as Exhibit A; provided, however, a party who has
10 produced its, his, or her own Confidential Documents may disclose such documents to
11 any persons, with or without any conditions to such disclosure, as it deems appropriate.

12 5. Attorneys' Eyes Only Documents, and any summaries, charts or notes
13 made therefrom, and any facts or information contained therein or derived therefrom,
14 may be disclosed only to the Court and/or to:

15 a. the outside attorneys (but not any in-house or corporate counsel) for
16 the parties hereto and such counsel's employees, paralegals or other secretarial and
17 clerical employees and clerical agents;

18 b. subject to the provisions of paragraph 6, below, outside independent
19 economic, technical, accounting and legal consultants (not including any in-house
20 or corporate counsel) or testifying experts (collectively, "Independent Advisors")
21 retained by counsel for the receiving party for assistance in the preparation for or
22 prosecution of the preliminary injunction hearing or trial of this Action;

23 c. stenographic reporters or videographers who are involved in
24 depositions, the trial, or any hearings or proceeding before the court in this Action;

25 d. outside vendors retained by outside counsel to provide support
26 services such as translation, copying, scanning, imaging, processing, or coding of
27 documents or preparation of demonstrative exhibits; and
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1 e. any other person upon such terms and conditions as the parties may
2 agree in writing.

3 Attorneys' Eyes Only Documents may be disclosed to the authorized persons listed in
4 subparagraph (b) above only after the procedures set forth in paragraph 6 have been met,
5 and only after such persons have been shown a copy of this Stipulation and Order and
6 have been advised of the terms and operation of this Stipulation and Order, and agree to
7 be bound by the terms of this Stipulation and Order in the form attached hereto as
8 Exhibit A; provided, however, a party who has produced his own Attorneys' Eyes Only
9 Documents may disclose such documents to any persons, with or without any conditions
10 to such disclosure, as it deems appropriate.

11 6. A receiving party seeking to disclose Attorneys' Eyes Only information of
12 a producing party to an Independent Advisor shall follow the procedures set forth below
13 before the Independent Advisor may receive any Attorneys' Eyes Only information:

14 a. Prior to providing Attorneys' Eyes Only information of a producing
15 party to an Independent Advisor, the receiving party shall transmit (via e-mail, fax
16 or overnight delivery) the following information to the producing party's counsel
17 of record: (1) the name of the Independent Advisor; (2) the present employer and
18 title of the Independent Advisor; (3) a resume (or similar description) describing
19 prior work/employment and publications of the Independent Advisor; (4) an
20 identification of all past or present relationships with any party to this Action; and
21 (5) a certificate in the form annexed hereto as Exhibit A, signed by the
22 Independent Advisor, confirming that he or she has read this Protective Order and
23 agrees to be bound by its terms, including without limitation this Court's
24 jurisdiction to address any breach of the Protective Order.

25 b. Within three (3) business days after transmittal of the information
26 described in Paragraph 6(a), the producing party or any other party who would be
27 injured by the proposed disclosure may object in writing (delivered via fax or
28 email to the receiving party) to disclosure of Attorneys' Eyes Only information to

1 the proposed Independent Advisor if facts available present a good faith basis to
2 believe that the Independent Advisor would not abide by this Protective Order, or
3 would have a conflict, or that disclosure would otherwise cause injury. Failure to
4 object within three (3) business days to an Independent Advisor shall be deemed a
5 waiver of any objection to the Independent Advisor's access to the Attorneys'
6 Eyes Only information.

7 c. The party objecting under Paragraph 6(b) to the disclosure of
8 Attorneys' Eyes Only information to the Independent Advisor shall, within two (2)
9 business days from the date of the transmittal of the written notice of objection,
10 confer with the receiving party and attempt to resolve the dispute. At or before
11 that conference, the producing party or other affected party shall inform the
12 receiving party of its or their reasons for objecting to the proposed disclosure. If
13 the parties cannot resolve the dispute, or if the conference does not take place,
14 then, within four (4) business days from the date of the transmittal of the written
15 notice of objection, the parties shall file a joint statement of discovery dispute as
16 required by the Court's procedures. No Attorneys' Eyes Only information shall be
17 disclosed to the Independent Advisor until the court resolves the dispute.

18 7. A producing party may designate any document or portion thereof
19 "Confidential" or "Attorneys' Eyes Only" pursuant to this Order by affixing the Legend
20 as provided under Paragraph 1(f) to any appropriate document.

21 8. Inadvertent production of any information, document or thing without it
22 being marked "Confidential" or "Attorneys' Eyes Only" shall not itself be deemed a
23 waiver of any claim of confidentiality as to such matter. Each party may designate as
24 "Confidential" or "Attorneys' Eyes Only" any documents that have previously been
25 produced in this Action without such designation by that party as follows:

26 a. Parties to this Action may designate such documents by sending
27 written notice of such designation, accompanied by copies of the designated
28 documents bearing the appropriate Legend, to all other parties in possession or

1 custody of such previously undesignated documents. Any party receiving such
2 notice and copies of designated documents pursuant to this subparagraph shall
3 return to the designating party all undesignated copies of such documents in its
4 custody or possession, or shall affix the appropriate Legend to all copies of the
5 designated documents in its custody or possession.

6 b. Upon notice of designation pursuant to this paragraph, parties shall
7 also: (i) make no further disclosure of such designated documents or information
8 contained therein except as allowed under this Order; and (ii) take reasonable steps
9 to notify any persons known to have possession of such designated document or
10 information of the effect of such designation under this Order.

11 9. In the case of Confidential Information or Attorneys' Eyes Only
12 information revealed during a deposition, if designation of a transcript or any portion
13 thereof, including exhibits, is made by a statement by the witness or his counsel to that
14 effect on the record, or is otherwise made before the stenographer transcribing such
15 deposition has disseminated to counsel for the Parties the transcript of the deposition, the
16 stenographer shall affix the appropriate Legend to the cover page and all appropriate
17 pages of the transcript and to each copy thereof.

18 The parties and their counsel may, but are not required to, excuse from depositions
19 individuals, including the parties, who are not authorized to receive Confidential
20 Information or Attorneys' Eyes Only information during portions of the deposition when
21 Confidential Information or Attorneys' Eyes Only information is discussed. A party does
22 not waive any rights under this Order regarding confidentiality if it or he does not
23 exercise its or his rights to exclude persons from attendance at any or all of the
24 deposition.

25 A party or a witness may designate a deposition or a portion thereof, disclosing,
26 containing or referring to any Confidential Information hereunder, as "Confidential" or
27 "Attorneys' Eyes Only" by informing counsel for all other parties to this Action in
28 writing within ten (10) business days after receipt of the transcript, as to the specific

1 pages deemed confidential, and thereafter such pages shall constitute Confidential
2 Documents or Attorneys' Eyes Only Documents pursuant to this Order. Receipt of a
3 rough draft of the transcript does not commence the time period noted in this paragraph.
4 Upon receipt of such notice, any party in possession of copies of such designated
5 transcript shall affix the appropriate Legend thereto. During the 10-day interval
6 following receipt of a deposition, the transcript shall be treated as an Attorneys' Eyes
7 Only Document.

8 10. Any and all Confidential Documents or Attorneys' Eyes Only Documents
9 containing personal identifying information for an individual, including social security
10 number, address, telephone numbers, and birth date, that are disclosed, reproduced,
11 admitted, introduced, or shown to a non-party at any time, including at a deposition,
12 hearing, submissions to the Court, trial, or otherwise, shall have such personal identifying
13 information redacted from the Confidential Document or Attorneys' Eyes Only
14 Document prior to being disclosed, reproduced, admitted, introduced, or shown to that
15 non-party. The party disclosing, reproducing, admitting, introducing, or showing the
16 Confidential Documents or Attorneys' Eyes Only Documents shall have the obligation to
17 redact the personal identifying information for an individual from the document prior to
18 such disclosure. Any party failing to properly redact personal identifying information for
19 an individual from Confidential Documents or Attorneys' Eyes Only Documents shall be
20 solely responsible for any consequences resulting from such disclosure, reproduction,
21 admission, introduction, or showing to a non-party.

22 11. All copies of any Confidential Documents or Attorneys' Eyes Only
23 Documents shall be treated as provided in this Order. Any person making, or causing to
24 be made, copies of any such documents shall make certain that each such copy bears the
25 appropriate Legend pursuant to the requirements of this Order.

26 12. In the event that any Confidential or Attorneys' Eyes Only Documents or
27 information derived therefrom is included with, or the contents thereof are disclosed in
28 any documents filed with the Clerk of this Court or any other court, including, without

1 limitation, any pleadings, motion papers, briefs or deposition transcripts, such documents
2 shall be filed under seal as required by Local Rule 5.6.

3 No Confidential Document, Attorneys' Eyes Only Document, or Confidential
4 Information shall lose such status under this Order as the result of the use of such
5 document or information in any hearing, trial, or other Court proceeding in this Action,
6 provided that such use is consistent with the terms of this Order. Counsel to the parties in
7 this Action shall meet at least five (5) business days before any such hearing, trial, or
8 other court proceeding in order to work out any objections to the use of any Confidential
9 Document, Attorneys' Eyes Only Document, or Confidential Information in such court
10 proceeding and to make such amendments to the Stipulation and this Order which the
11 parties agree are necessary to assure the continued confidentiality of such document or
12 information.

13 13. Unless and until otherwise ordered by the Court, or otherwise agreed by the
14 parties, all documents and other discovery materials designated "Confidential" or
15 "Attorneys' Eyes Only" shall be treated as such under this Order. In the event that any
16 party objects to the designation of any document, the objecting party may seek
17 modification of the designation or the disclosure of the redacted information in
18 accordance with the following procedure:

19 At least ten (10) business days before the date set for trial, or five (5)
20 business days before any class certification hearing, herein, the receiving
21 party may notify the producing party, in writing, that the receiving party
22 does not concur in the designation or redaction. The parties shall attempt to
23 resolve such challenges informally. In the event that such attempts are not
24 successful, the parties may file a joint notice of discovery dispute.

25 14. At any time, any party may request in writing permission to disclose any
26 document or information designated "Confidential" or "Attorneys' Eyes Only" to any
27 person other than those permitted access to such information under Paragraphs 4 and 5
28 above by identifying the person and the reason. Each other party, by its counsel, shall

1 thereafter respond in writing within five (5) business days of receipt of the written
2 request, or such other period of time as the Court may designate pursuant to an ex-parte
3 application seeking to shorten said time, and if the requested permission is withheld, shall
4 state the reasons therefore. If consent has been withheld by any party, and the parties are
5 subsequently unable to agree on whether the requested disclosure should be allowed, or
6 they cannot agree on the terms and conditions of disclosure, the matter may be submitted
7 to the Court in the form of a joint notice of discovery dispute; provided, however, that
8 until such time as the Court orders otherwise, no such disclosure shall be made.

9 15. Notwithstanding anything to the contrary contained herein, all objections as
10 to admissibility in evidence of the discovery material subject to this Order are reserved
11 and are not waived by any terms of this Order. The use of Confidential or Attorneys'
12 Eyes Only materials as evidence at trial or class certification hearing shall be subject to
13 this Order unless modified by the Court.

14 16. If at any time any document or information protected by this Order is
15 subpoenaed by any court, administrative or legislative body, or is requested by any other
16 person or entity purporting to have authority to require the production of such
17 information, the party to whom the subpoena or other request is directed shall
18 immediately give written notice thereof to any party which has designated such
19 information "Confidential" or "Attorneys' Eyes Only." After receipt of the notice
20 specified under this paragraph, the designating party shall have the sole responsibility for
21 obtaining any order it believes necessary to prevent disclosure of documents designated,
22 and the party to whom the referenced subpoena or other request is directed shall be free
23 to produce such document or information unless served within fifteen (15) business days
24 with an appropriate order issued by a court of competent jurisdiction precluding such
25 disclosure.

26 17. The inadvertent production of any document or other information during
27 discovery in this Action shall be without prejudice to any claim that such material is
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1 privileged or prohibited from discovery as work product, and no party shall be held to
2 have waived any rights by reason of such inadvertent production.

3 18. The termination of proceedings in this Action shall not relieve the parties
4 from the obligation of maintaining the confidentiality of all documents and information
5 produced and designated pursuant to this Order, unless the Court orders or permits
6 otherwise. Upon the final disposition of this Action, including appeal, the attorneys for
7 the parties shall, within thirty (30) days after request made by the producing party, return
8 to the producing party or destroy all documents designated by the producing party as
9 “Confidential” or “Attorneys’ Eyes Only” and all copies thereof, and shall destroy all
10 extracts, excerpts, and summaries of data from such documents, except that trial counsel
11 for each party may retain one copy of each pleading, motion, or other paper filed with the
12 Court (including attachments), for record purposes only.

13 Dated this 14th day of May, 2012.


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17 Roslyn O. Silver
18 Chief United States District Judge
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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

KELVIN D. DANIEL, et al

Plaintiffs,

v.

SWIFT TRANSPORTATION
CORPORATION,

Defendant.

Case No. 2:11-cv-01548-PHX-ROS

**ACKNOWLEDGEMENT AND
CONSENT TO BE BOUND BY
STIPULATED PROTECTIVE ORDER**

The undersigned, _____, hereby acknowledges that I have read the Stipulated Protective Order (the "Order") entered by the United States District Court for the District of Arizona in the above-captioned case and understand the terms thereof. I agree not to use the Confidential Information or Attorneys' Eyes Only information, as defined in the Order, for any purpose other than in connection with the investigation, prosecution or defense of claims in this Action (as defined in the Order), and I will not disclose the Confidential Information or Attorneys' Eyes Only information except in testimony taken in the Action, and will otherwise comply with the terms of the Order. I will return to counsel of record in the Action at the end of my involvement or the conclusion of the Action all Confidential Information or Attorneys' Eyes Only information that has been provided to me and all copies thereof, and I shall not make any copies of Confidential Information or Attorneys' Eyes Only

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1 information, except as is necessary to my participation in the Action. I further submit to
2 the jurisdiction of the court for any action involving my violation of the Order.

3 Date: _____

Signature: _____

4 Print Name: _____

5 Address: _____
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